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U.S. Department of Justice
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Assistance Available in the United States Pursuant to International Conventions on the Service of Documents and Collection of Evidence

Service of Documents

The United States Department of Justice's Office of International Judicial Assistance ("OIJA") serves as the Central Authority pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. OIJA also serves as the Central Authority pursuant to the Additional Protocol to the Inter-American Convention on Letters Rogatory, to which the United States is a signatory for purposes of legal service of documents. In addition, OIJA handles service requests received from non-Convention States through diplomatic channels. Requests for service of process on the United States Government, its departments, agencies, or instrumentalities should be sent directly to OIJA. Service of process requests directed at private individuals or companies located in the United States are executed through a private contractor. Accordingly, these service requests and service-related inquiries should be sent directly to OIJA's contractor, ABC Legal (formerly known as PFI), at 633 Yesler Way, Seattle, WA 98104 USA. For service of process requests pursuant to the Hague Service Convention or letters rogatory through diplomatic channels, the documents need to be accompanied by a \$95 USD processing fee, payable to ABC Legal. There is no fee for service requests pursuant to the Inter-American Convention or requests for the United States Government. Additional information is available here: <http://www.hagueservice.net/homepage.asp?lang=english> and <https://www.hcch.net/en/states/authorities/details3/?aid=279>.

In order to obtain a status update on a pending service of process request sent to ABC Legal, please contact Mr. Rick Hamilton at rickh@abclegal.com or at (001) 206-521-2970.

Collection of Evidence

The United States will execute Letters of Request sent pursuant to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters ("Hague Evidence Convention") or letters rogatory received through diplomatic channels that seek specific testimony or documents from properly identified witnesses.¹ We execute requests that seek performance of a judicial act that courts in the United States can perform under United States law.

¹ Please note the United States is only a party to Inter-American Convention on Letters Rogatory and Additional Protocol (IAC) for purposes of service of process, not evidence gathering. Therefore, requests for evidence made pursuant to the IAC will be returned unexecuted. The request would then have to be resubmitted through diplomatic channels or pursuant to the Hague Evidence Convention, if the Requesting Authority is a party to the Convention.

The scope of permissible judicial acts is generally defined by the United States Federal Rules of Civil Procedure.² The following provides an overview of international judicial assistance in the United States with respect to several commonly-requested types of evidence.

For members of the Hague of Evidence Convention, Letters of Request may be sent directly to our office at the following address:

U.S. Department of Justice
Civil Division
Office of International Judicial Assistance
Benjamin Franklin Station
P.O. Box 14360
Washington, D.C. 20004
United States of America

Letters of Request may also be submitted electronically to the U.S. Central Authority at OIJA@usdoj.gov.

Requests made via letters rogatory are transmitted through diplomatic channels to our office. Letters rogatory transmitted to the U.S. Department of State should preferably include a cover letter that states the evidence request is for use in a civil or commercial matter and asks that the U.S. Department of State transmit the letters rogatory to OIJA for execution. Letters rogatory should be sent to the following address:

Judicial Assistance Officer
U.S. Department of State
Office of Legal Affairs (CA/OCS/L)
SA-17, 10th Floor
2201 C Street, NW
Washington, DC 20522-1710

I. General Requirements for International Judicial Assistance Requests

Generally, a request must include the names of the parties in the foreign proceeding and a sufficiently detailed description of the nature of the underlying proceeding. If documentary evidence is sought, the request must include a description of the documents sufficient to allow the competent authority executing the request to identify them. If the request seeks witness testimony, the request must include the name and contact information of the witness and a list of specific questions to be posed, as well as any instructions that the Requesting Authority may have regarding the manner of questioning, *i.e.*, whether sworn or unsworn and whether any privileges are applicable. All this information must be provided in English. Unless a deposition is specifically requested, the method of obtaining witness testimony is through answers to written interrogatories.

To ensure efficient and prompt processing, we encourage Requesting Authorities to provide their contact information, preferably an email address, to which clarification inquiries can

² Available for download at <http://www.uscourts.gov/uscourts/rules/civil-procedure.pdf>.

be sent. We also encourage Requesting Authorities to use the Model Letter of Request provided by the Hague Conference on Private International Law as a guideline to ensure the Request includes all necessary information.³

II. Requests that the United States is Unable to Execute

a. *Investigations*

In the United States, courts are unable to conduct factual investigations or hire private investigators. In addition, the United States does not maintain a central registry of its residents. Therefore, we are unable to execute requests seeking to obtain an individual's address or employer, property ownership, marital status, inheritance matters, or social and economic status. We are also unable to execute requests that seek an investigation of the health and welfare of minors located in the United States. Requesting Authorities and parties to the litigation are free to independently hire investigators to obtain the desired information. Alternatively, the foreign country's embassy and consulate personnel may conduct "welfare and whereabouts" visits, and under certain circumstances, state child welfare offices may provide assistance if directly contacted by the Requesting Authority or litigants. OIJA plays no role in such visits.

There are also several internet search engines that enable parties to locate an address of an individual or identify companies that perform "skip tracing," a phrase used to describe the process of locating individuals whose addresses are unknown. Once an address is identified, the parties are free to contact the individual to ascertain whether he or she will voluntarily provide the necessary evidence, or the Requesting Authority may issue a request for international judicial assistance, providing the contact information for the witness and a list of questions to be posed to the witness. Requests may also be submitted to confirm whether the address is still valid or to obtain other information, such as property records, for that address.

For social or economic investigations, one alternative is for the Requesting Authority to issue a request, identifying a witness with knowledge of the person's social or economic situation and provide a list of questions to be posed to that witness. For example, if the individual is, or has been, employed in the United States and the Requesting Authority can identify the employer(s), testimony and documentary evidence regarding the individual's income can be solicited. Additionally, if the Requesting Authority identifies real property owned by the individual, we may be able to obtain property records. We may also be able to obtain information regarding specific bank accounts (see *Bank Records* below).

b. *Experts*

We are unable to execute requests for the appointment of an unspecified expert to conduct an investigation and prepare a report. However, under very limited circumstances, where the Requesting Authority identifies a specific expert to perform a clearly defined act and has already arranged for payment for the expert's services, we can contact that expert and execute the request. Only if the payment or reimbursement has been pre-arranged will OIJA undertake this work. If the

³ Available at <https://assets.hcch.net/docs/e7b6b267-49e9-4e02-b814-c0780e5b65e3.pdf> (Please note that this form also provides helpful guidelines to Requesting Authorities submitting requests via diplomatic channels, as the requirements for requests sent pursuant to either method are similar).

request requires the expert to review and analyze documents from a company or witness that will not produce the documents voluntarily, first a separate request must be submitted to obtain the evidence which OIJA will do through a subpoena. This type of request is uncommon, and to date has been limited to accounting experts reviewing a clearly identified body of records.

c. Legal Opinions

Requests for legal opinions are outside the scope of judicial assistance. United States courts cannot issue advisory opinions on legal issues. See also Report on the work of the Special Commission of May 1985 on the Operation of the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, Part I, § 1(D). Therefore, Requests seeking interpretations of law or legal opinions cannot be executed. In order to obtain an opinion on the law, the parties may retain a private attorney licensed in the relevant United States jurisdiction to conduct legal research.

d. Enforcement of a Judgment or Court Order

Requests for enforcement of judgment or court order are outside the scope of judicial assistance. Additionally, we are unable to execute requests that ask for seizure of assets, transfer of property, or any other affirmative action. To enforce a judgment or court order, seize assets, or transfer property in the United States, the parties must file a civil action with the United States court that has jurisdiction over the person or property in question.

III. Limitations on Certain Types of Requests

a. Obtaining Court Orders, Vital Records, and Other Publicly Available Information

Publicly available information, such as copies of court orders, laws, company registration information, and vital records (birth, marriage and death certificates, divorce decrees, etc.), are considered by the United States to be beyond the scope of assistance that can be provided by our office.

The Requesting Authority or the parties to the litigation may obtain copies of court documents by identifying the relevant court and visiting that court's website. Using an internet search engine, the Requesting Authority or the parties can identify the relevant court's website by searching for the court by name. In addition, Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain case and docket information online from federal appellate, district, and bankruptcy courts. PACER is available at www.pacer.gov. Note that some websites may require creating an account and/or payment to obtain documents.

Company registration information can be obtained directly from the Secretary of State based on the state where the company is incorporated. For example, to obtain information about a company incorporated in California, visit the California Secretary of State's website: <http://kepler.sos.ca.gov/>. Please note certain states require payment for access to company information.

Similarly, vital records such as birth, marriage certificates, death certificates, and divorce decrees⁴ may be obtained from the local state government of the state in the United States in which the relevant act occurred. Most states operate websites with instructions for obtaining certified copies of vital records. Using an internet search engine, the Requesting Authority or the parties can identify the relevant state's website by searching for its office of vital records. For example, birth, marriage certificates, death certificates, and divorce decrees in the state of Texas are available from the Texas Department of State Health Services, Vital Statistics Unit (<http://www.dshs.texas.gov/vs/default.shtm>). Below are two helpful websites:

- <https://www.vitalchek.com/>
- <http://www.cdc.gov/nchs/w2w/index.htm>

Our office can provide guidance if the Court or parties are unfamiliar with where to find particular documents.

b. *Consent to Obtain Income Tax Information, Social Security Records, and Medical Records*

Under United States law, an individual's income tax returns, social security benefits, and medical records are confidential and cannot be released without the signed consent of the individual, his or her legal guardian, or legal representative. In the case of requests seeking income tax information from the United States Internal Revenue Service (IRS), the taxpayer can provide the requisite consent by filling out IRS Form 4506, available online at <https://www.irs.gov/pub/irs-pdf/f4506.pdf>. There is a \$50 fee for each return requested and payment must be made by check or money order. The signed form must be received by the IRS within 120 days of the date of signature. Please note that an individual can fill out the form and designate the foreign Court as the third party to receive the documents from the IRS, thereby negating a need for a request to our office.

In addition, social security records are confidential and cannot be released without the signed consent of the individual. A request for social security records must include the name, social security number (SSN), and birthdate of the person whose records are sought. If the SSN is not available, then the person's place of birth, mother's maiden name, or father's name must be provided in addition to the person's name and birthdate. The request must also provide background information that explains why the records are needed. The guidance provided by the Social Security Administration (SSA) requires that the information and records sought must be clearly identified and described or else the request will not be processed. Lastly, the consent form must contain a clear and legible signature. See <https://secure.ssa.gov/apps10/poms.nsf/lnx/0203305003>.

When non-tax information, such as pension payments, social security benefits, etc., is sought, the individual should complete Form SSA-3288 to provide the required consent, available at <http://www.ssa.gov/online/ssa-3288.pdf>. This form must be filled out in its entirety and signed by the individual. The signed consent form must be received by SSA within one year of the date of

⁴ Please note that divorce judgments, outlining the terms of the divorce, are not publically available documents and can only be obtained by a party to the proceeding or through a court order. However, it is possible for foreign courts or parties to the foreign litigation to obtain proof of the divorce in the form of a certificate or decree in certain jurisdictions.

the consenting individual's signature. Subject to a few exceptions, if the request seeks non-tax information regarding a deceased subject, those records can be released without consent when the request includes proof of death. See <https://secure.ssa.gov/apps10/poms.nsf/lnx/0203315010>.

All consent forms submitted for the SSA must identify the Office of International Judicial Assistance (OIJA) as the third party authorized to receive the records. In Form SSA-3288, the section stating "I authorize the Social Security Administration to release information or records about me to: *Name of Person or Organization/*Address of Person or Organization" should identify OIJA as the recipient of the documents.

Health care providers cannot disclose medical records unless authorization has been given by either the patient or a legal representative of that patient. The patient or legal representative must provide a release of medical information form containing: (1) the name or identification of the person(s)/class of persons authorized to make request; (2) the name or identification of other person(s)/class of persons to whom the health care entity may disclose protected health information; (3) a description of the information to be used/disclosed that specifically identifies the information; (4) a description of each purpose of the requested use/disclosure; (5) an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure; (6) a signature of the individual and date; (7) an acknowledgement that patient or representative has been notified of his or her right to revoke authorization in writing; (8) a description of how the individual may revoke authorization and the exceptions to the right to revoke; (9) notice that treatment, payment, enrollment, or eligibility for benefits may not be conditioned on patient signing authorization form; and (10) notice that disclosure pursuant to authorization may be subject to re-disclosure and may no longer be protected by federal law. 45 C.F.R. § 164.508(a)(2) (2013). OIJA can provide a sample Medical Authorization Model Form, sample Cover Letter, and Instruction Sheet upon request.

c. Immigration Records

In the United States, immigration records are kept by different divisions in the Department of Homeland Security ("DHS"). Therefore, the type of record sought will determine which office in DHS handles the request.

U.S. Customs and Border Protection ("CBP") maintains records regarding an individual's entrances into and exits from the United States. Any personally identifiable information that DHS collects, uses, maintains, and/or disseminates in connection with a system which contains U.S. citizen, lawful permanent resident, and other alien data, is administratively treated consistent with the U.S. Privacy Act of 1974, as amended (5 U.S.C. §552a). Specifically, the Privacy Act states that "[n]o agency shall disclose any record, which is contained in a 'System of Records' by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains" 5 U.S.C. § 552a(b). Consequently, in order to receive information regarding an individual's entrances and exits, that individual will have to provide written consent by completing the authorization form provided by CBP (please contact OIJA for the form).

U.S. Citizenship and Immigration Services ("USCIS") maintains records of an individual's citizenship status. In order to obtain these records, the request must include

identifying information regarding the individual so that his or her records can be located. The request should include the individual's name, date of birth, and place of birth. If available, please also provide any aliases, the individual's A-File number (U.S. immigration number), and SSN. In some situations, USCIS will be unable to locate the records (due to their age or lack of identifying information) or the individual will be protected by a confidentiality provision, and the records will therefore be unavailable.

Requests for visa and passport information are directed to the U.S. Department of State, but release of visa records will be made on a case-by-case basis. The Immigration and Nationality Act ("INA") § 222(f), 8 U.S.C. § 1202(f), provides that visa records are confidential and that, subject to limited exceptions, the information in visa records "shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality and other laws of the United States." Section 222(f)(1) allows disclosure of records "[at] the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court." For the Department of State to make the determination whether the evidence should be provided "in the interest of the ends of justice," the request must clearly articulate the reasons for which the information is sought and provide background information on the case that indicates how this evidence will assist in the determination of the case.

d. *Electronic Communications*

A request may be made to obtain electronic communications, such as e-mails, from a service provider (Google, Yahoo, Facebook, etc.). However, service providers are not required to disclose the content of communications in the context of civil international judicial assistance requests. *See* Stored Communications Act (SCA) codified as 18 U.S.C. §§ 2701-2711. Likely all that will be obtainable pursuant to a Letter of Request are customer user and registration records, which may include the customer's name, address, local and long distance telephone connection records, or records of session times and durations, length of service (including start date) and types of service utilized; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and means and source of payment for such service (including any credit card or bank account number). These requests always require a court order which the U.S. Central Authority, through U.S. Attorney's Offices, will obtain pursuant to 28 U.S.C. § 1782(a). Please note in order for these requests to be executed, the request must include a copy of the court order, with an English translation, explaining what evidence is being requested and for what purpose.

e. *Bank Records*

To obtain bank records, the request must include information regarding specific bank accounts. The request should include the full name of the account holder, the name of the bank in which the account is held, the account number, and preferably other personal identifying information, such as social security number, address of the individual, date of birth, etc. Requests that only provide the name of an individual and the name of the bank cannot be executed; additional identifying information about the individual is required. These requests usually require a court order which the U.S. Central Authority, through U.S. Attorney's Offices, will obtain pursuant to 28 U.S.C. § 1782(a). In addition, every major financial institution has a national subpoena

processing office. While a Request should identify a particular bank branch or location, these Requests will always be referred to the appropriate nationally-designated office.

Please note, per U.S. federal law, financial institutions only keep customer and company records for up to 7 years, at most 10 years. If the request is seeking evidence from any of the affiliates of J.P. Morgan Chase Bank N.A. (including Chase Bank N.A., Chase Bank USA, etc.), please include J.P. Morgan Chase Bank N.A. as a witness in the request. Additionally, for records from Bank of America, the request must include the time period for which records are being requested.

f. *DNA Samples*

In the United States, requests for DNA samples must include the names of the mother, child, and putative father along with his current address. If possible, the birthdate or social security number of the putative father should also be provided. Additionally, the foreign medical laboratory tasked with analyzing the DNA sample must supply the materials to be used for obtaining the sample (such as a buccal swab kit), provide instructions for obtaining the DNA sample, and indicate what identification documents should be provided by the individual at the time of taking the sample (photo, fingerprints, copy of passport). The request must also include an address where the sample should be returned that is not a P.O. Box. Please note that there may be costs associated with obtaining a DNA sample if a private laboratory is used that will need to be reimbursed.

g. *Testimony via Videoconference*

The United States occasionally receives requests for a deposition of an individual in the United States to be taken via videoconference and conducted by a judge or an attorney from a foreign country.

OIIA is unable to execute this type of request as it does not ask the United States to directly obtain the evidence on behalf of the foreign Court. OIIA will only execute letters rogatory that ask the United States, as the requested state, to obtain the evidence directly from the witness. Thus, OIIA cannot execute a request that asks us to set up a videoconference so that the foreign court or foreign attorney, rather than an attorney from the United States Department of Justice, can directly ask the questions. However, such a videoconference deposition is proper and does not violate United States law, so long as it is voluntary. If that is the case, the deposition may be arranged for privately.

If the witness, however, is unwilling to appear voluntarily in such a videoconference deposition, the foreign court is welcome to submit a Request to our office. In such a case, the foreign court would provide OIIA with the name and address of the witness and the specific questions that are to be asked of the witness. An Assistant United States Attorney in the Department of Justice would compel the witness to appear for a deposition by issuing a subpoena. Upon the request of the foreign court, interested lawyers for the parties or a foreign judge may be present at the deposition. At the deposition, the Assistant United States Attorney would ask the witness the questions that were provided in the request. Anyone present from the Requesting Authority at the deposition would only be permitted to ask follow up questions that clarify those

submitted in the Request. The executed Request and the transcript of the deposition would be returned to the foreign court by OIJA.

IV. Obtaining Evidence through U.S. Courts Directly

Under United States law, any “interested party” can file an application with a United States District Court to be appointed a “commissioner” with authority to compel production of evidence in the United States in support of foreign litigation. See 28 U.S.C. § 1782(a). OIJA would not be involved in such a proceeding initiated by interested parties.

V. Expenses and Fees

Generally, the United States is able to execute requests without reimbursement. However, the United States may seek reimbursement for any third-party costs associated with obtaining the requested evidence. Most commonly, this involves court reporter fees for a deposition, private service processor fees, or laboratory fees for collection of a DNA sample. Where permissible and possible, our office can provide information on where to make the payment so the foreign court or parties to the litigation can make the payment directly. We will endeavor to notify the foreign court of any expenses we intend to seek reimbursement for ahead of time. Payment should be provided by check.

Should you have any additional inquiries, please feel free to contact the United States Department of Justice’s Office of International Judicial Assistance at OIJA@usdoj.gov or by telephone at +1-202-514-6700.